

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 203

Introduced By: Gay, 14
Read first time: January 9, 2007
Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health care facilities; to amend sections
2 71-452, 71-453, and 71-6021, Reissue Revised Statutes of
3 Nebraska, and section 71-401, Revised Statutes Cumulative
4 Supplement, 2006; to provide for an informal conference
5 process; to harmonize provisions; and to repeal the original
6 sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-401, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 71-401. Sections 71-401 to 71-459 and sections 4 and 5 of
4 this act shall be known and may be cited as the Health Care Facility
5 Licensure Act.

6 Sec. 2. Section 71-452, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 71-452. Within fifteen days after service of a notice under
9 section 71-451, an applicant or a licensee shall notify the director
10 in writing that the applicant or licensee (1) desires to contest the
11 notice and request an informal conference with a representative of the
12 department in person or by other means at the request of the applicant
13 or licensee as provided in section 71-453, (2) desires to contest
14 the notice and request an informal conference with an independent peer
15 review organization as provided under section 4 of this act, (3)
16 desires to contest the notice and request a hearing as provided in
17 section 71-454, or ~~(3)~~ (4) does not contest the notice. If the
18 director does not receive such notification within such fifteen-day
19 period, the action of the department shall be final.

20 Sec. 3. Section 71-453, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-453. (1) The director shall assign a representative of
23 the department, other than the individual who did the inspection upon
24 which the notice is based, to hold an informal conference with the
25 applicant or licensee within thirty days after receipt of a request
26 made under subdivision (1) of section 71-452. The representative
27 shall possess experience in ensuring the quality provision of health

1 care services and shall not make conclusions or diagnoses for which
2 he or she is not licensed. Within twenty working days after the
3 conclusion of the conference, the representative shall affirm,
4 modify, or dismiss the notice. The representative shall state in
5 writing the specific reasons for affirming, modifying, or dismissing
6 the notice and shall immediately transmit copies of the statement to
7 the director and the applicant or licensee. The applicant's or
8 licensee's copy of such statement shall be sent by certified mail to
9 the last address shown in the records of the department. If the
10 applicant or licensee desires to contest the affirmed or modified
11 notice, the applicant or licensee shall notify the director in writing
12 within five working days after receiving such statement that the
13 applicant or licensee requests a hearing.

14 (2) If an applicant or a licensee successfully demonstrates
15 during an informal conference or a hearing that the deficiencies
16 should not have been cited in the notice, the deficiencies shall be
17 removed from the notice and the deficiency statement and any
18 sanction imposed solely as a result of those cited deficiencies shall
19 be rescinded.

20 Sec. 4. (1) If an applicant or licensee requests an
21 informal conference under subdivision (2) of section 71-452, the
22 applicant or licensee shall be entitled to an informal conference
23 facilitated by an independent peer review organization with which the
24 director has contracted pursuant to section 5 of this act. An
25 informal conference shall take place within thirty days after receipt
26 of such request. Within twenty working days after the conclusion of
27 the informal conference, the organization shall affirm, modify, or

1 dismiss the notice. The organization shall state in writing the
2 specific reasons for affirming, modifying, or dismissing the notice
3 and shall immediately transmit copies of the statement to the
4 director and the applicant or licensee. The statement shall be sent
5 to the applicant or licensee by certified mail to the last address
6 shown in the records of the department.

7 (2) If the applicant or licensee desires to contest the
8 affirmed or modified notice, the applicant or licensee shall notify
9 the director in writing within five working days after receiving such
10 statement that the applicant or licensee requests a hearing.

11 (3) If an applicant or a licensee successfully demonstrates
12 during an informal conference or a hearing that the deficiencies
13 should not have been cited, the deficiencies shall be removed from
14 the notice and the deficiency statement and any sanction imposed
15 solely as a result of those cited deficiencies shall be rescinded.

16 Sec. 5. (1) The director shall contract with an independent
17 peer review organization to facilitate any informal conference which
18 may be requested under subdivision (2) of section 71-452. Such
19 contract shall provide for fees to be paid by the applicant or
20 licensee that voluntarily requests an informal conference by the
21 independent peer review organization. The fees shall fully cover all
22 costs of the informal conference and any associated review conducted
23 by the independent peer review organization. The applicant or
24 licensee shall pay such fees to the department. The department shall
25 remit all fees collected under this section to the State Treasurer
26 for credit to the Department of Health and Human Services Regulation
27 and Licensure Cash Fund. Fees collected under this section shall only

1 be used for activities related to an informal conference under this
2 section.

3 (2) To be eligible to conduct such informal conferences, an
4 independent peer review organization shall possess experience in
5 ensuring the quality provision of health care services, and no
6 representative of such organization shall make conclusions or
7 diagnoses for which he or she is not licensed. Such organization
8 shall utilize one or more physicians for review of any determination
9 involving medical treatment and the particular reasons for any
10 determination set forth in the notice under section 71-451.

11 Sec. 6. Section 71-6021, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 71-6021. (1) Notwithstanding the provisions of sections
14 71-6019 and 71-6020, the administrator of a nursing home may refuse
15 access to the nursing home to any person if the presence of such
16 person in the nursing home would be injurious to the health and safety
17 of a resident or would threaten the security of the property of a
18 resident or the nursing home or if the person seeks access to the
19 nursing home for commercial purposes. Any person refused access to a
20 nursing home may, within thirty days of such refusal, request a
21 hearing by the department. The wrongful refusal of a nursing home to
22 grant access to any person as required in sections 71-6019 and 71-6020
23 shall constitute a violation of the Nebraska Nursing Home Act. A
24 nursing home may appeal any citation issued pursuant to this section
25 in the manner provided in sections 71-452 to 71-455 and sections 4
26 and 5 of this act.

27 (2) Nothing in sections 71-6019 to 71-6021 shall be

1 construed to prevent (a) an employee of the Department of Health and
2 Human Services, the Department of Health and Human Services Regulation
3 and Licensure, or the Department of Health and Human Services Finance
4 and Support, acting in his or her official capacity, from entering a
5 nursing home for any inspection authorized by the act or any rule or
6 regulation adopted and promulgated pursuant thereto or (b) a state
7 long-term care ombudsman or an ombudsman advocate, acting in his or
8 her official capacity, from entering a nursing home to conduct an
9 investigation authorized by any rules and regulations promulgated by
10 the Department of Health and Human Services.

11 Sec. 7. Original sections 71-452, 71-453, and 71-6021,
12 Reissue Revised Statutes of Nebraska, and section 71-401, Revised
13 Statutes Cumulative Supplement, 2006, are repealed.